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February 17, 2010

The Honorable Jocelyn Boyd
Interim Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: State Universal Service Support of Basic Local Service Included in a
Bundled Service Offering or Contract Offering
Docket No. 2009-326-C

Dear Ms. Boyd:

Enclosed for filing is the Post-Hearing Brief of AT&T South Carolina in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/nml
Attachment
cc: All Parties of Record
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**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: State Universal Service Support of)	
Basic Local Service Included in a Bundled)	Docket No. 2009-326-C
Service Offering or Contract)	
Offering)	

POST-HEARING BRIEF OF AT&T SOUTH CAROLINA

Consistent with the August 14, 2009 letter it filed in this docket, BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T South Carolina”) is not taking a position on the issue in this docket. However, in order to protect its rights, AT&T South Carolina respectfully submits this Brief to address one aspect of the testimony of CenturyLink witness Ann Prockish. Ms. Prockish testified that:

While the Commission no longer has authority over the pricing and terms and conditions for bundled and contract offerings, the Commission still has authority over these offerings when it comes to quality of service, complaints, and COLR expectations.¹

She later testified that, from a layperson’s perspective, “I don’t see much difference between the packaged services that are identified in [subsection 58-9-280(I)] and the packaged or bundled services that are identified in Section [58-9-285].”² On redirect examination, Ms. Prockish clarified that she was simply saying that “for CenturyLink’s purposes, we do not distinguish between bundles or basic local exchange services as it

¹ Tr. at 28.

² Tr. at 95.

relates to service quality,” and “we are following all the service quality regulations for all of our access lines, not just the stand-alone.”³

AT&T South Carolina appreciates this clarification. However, because the operative language in the “bundles and contract” statute Ms. Prockish addresses is substantively identical to the operative language of subsection 58-9-576(C) under which AT&T South Carolina operates,⁴ AT&T South Carolina respectfully submits and preserves its position on this issue. In order to do so, AT&T South Carolina will compare subsections 58-9-280(I), 58-9-285(B), and 58-9-576(C).

A. Subsection 58-9-280(I)

In 1996, both the General Assembly of South Carolina and Congress enacted legislation that opened the local exchange market to competition. Subsection 58-9-280(I) was part of the State’s 1996 legislation, and it provides that:

The incumbent LEC’s subject to this section shall be authorized to meet the offerings of any local exchange carrier serving the same area by packaging services together, using volume discounts and term discounts, and by offering individual contracts for services, except as restricted by federal law. Individual contracts for services or contracts with other providers of telecommunications services shall not be filed with the commission, except as required by federal law, provided that telecommunications carriers shall provide access to such contracts to the commission as required.

Among other things, this subsection relaxed regulatory nondiscrimination obligations that arguably could have prevented incumbent LECs from providing customized offerings to customers, but only when the incumbent LEC used such an offering “to meet the offerings of any local exchange carrier serving the same area.” Additionally, this

³ Tr. at 102-03.

⁴ See Notice, *In Re: AT&T South Carolina’s Notice of Election to Operate Pursuant to S.C. Code Ann. §58-9-576(C)*, ND-2009-8-C (September 23, 2009).

subsection requires ILECs to “provide access to such contracts to the commission,” and it does not expressly address the extent of the Commission’s regulatory jurisdiction over such contracts.

B. Subsection 58-9-285(B)

In 2004, the General Assembly enacted the “bundles and contracts” legislation.⁵ Unlike subsection 58-9-280(I), this legislation was not limited to ILEC offerings that “meet the offerings of any local exchange carrier serving the same area.” Instead, in light of the intense competition that developed in the near-decade since the enactment of subsection 58-9-280(I), this legislation allows a qualifying LEC to offer bundled or contract offerings anywhere in its service territory. And while subsection 58-9-280(I) is silent on the extent of the Commission’s regulatory jurisdiction over offerings it addresses, section 58-9-285(B) expressly states that the Commission “must not: (1) impose any requirements related to the terms, conditions, rates, or availability of any bundled offering or contract offering . . . that a customer accepts after the effective date of this act; or (2) otherwise regulate any bundled offering or contract offering . . . that a customer accepts after the effective date of the act.”⁶ Imposing quality of service requirements, adjudicating complaints, and addressing COLR issues clearly is regulation of service. Except as otherwise provided in the Section 58-9-285, therefore, such regulation of bundled and contract offerings is expressly prohibited.

The bundles and contracts legislation, of course, contains the following exception to this prohibition:

⁵ S.C. Code Ann. §58-9-285.

⁶ Subsection 58-9-576(C), under which AT&T South Carolina currently operates, contains substantively identical language. *See Id.*, §§58-9-576(C)(2), (3), and (4).

Without limiting the foregoing, upon the filing of a complaint by an end use purchaser of a bundled offering or a contract offering, the commission may enforce the terms and conditions of a bundled offering or a contract offering under the same principles that apply when a court of general jurisdiction enforces the terms and conditions of an unregulated contract between two parties.

To the extent Ms. Prockish suggests that customers can bring complaints at the Commission to enforce quality of service provisions or COLR provisions that are expressly set forth in a bundled offering or in a contract offering, that suggestion is not, on its face, inconsistent with the language of the statute. However, to the extent that Ms. Prockish suggests that a customer can bring a complaint asking the Commission to change the terms of a bundled or contract offering, or to add service quality and/or COLR requirements that are not set forth in a bundled or contract offering, AT&T South Carolina respectfully disagrees.

C. Subsection 58-9-576(C)

Even if the broad statement that “the Commission still has authority over [bundled and contract] offerings when it comes to quality of service, complaints, and COLR expectations” was entirely accurate (and as explained above, it is not), that statement clearly would not apply to companies operating under subsection 58-9-576(C). This subsection charges the Commission with ensuring an electing LEC’s compliance with specified pricing requirements that apply to grandfathered stand-alone basic residential lines.⁷ Otherwise, it provides that the Commission must not “impose any requirements related to the terms, conditions, rates, or availability” of service “or otherwise regulate” the retail services of the electing LEC or the retail interexchange services of the electing LEC or its affiliated

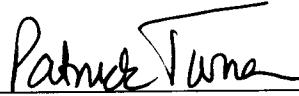
⁷ *Id.*, §58-9-576(C)(2).

entities.⁸ And unlike the bundles and contracts legislation, there is no provision allowing a customer to enforce the terms of any offering by filing a complaint with the Commission.

CONCLUSION

AT&T South Carolina appreciates the opportunity to submit and preserves its position on this issue.

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⁸ *Id.*, §§58-9-576(C)(2),(3), and (4). This language is substantively identical to the subsection 58-9-285(B) of the bundles and contracts statute.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina (“AT&T”) and that she has caused the Post-Hearing Brief of AT&T South Carolina in Docket No. 2009-326-C to be served upon the following this February 17, 2010:

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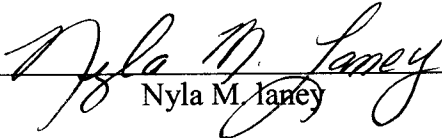
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